

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LARRY CHARLES CLEVELAND,
Petitioner
v.
J. SOTO,
Respondent.

Case No. CV 16-2118-DSF (GJS)

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition and all pleadings, motions, and other documents filed in this action, the Report and Recommendation of United States Magistrate Judge (“Report”), Petitioner’s Objections to the Report, Petitioner’s June 13, 2016 request asking the Magistrate Judge to reconsider the Report, and the Magistrate Judge’s order denying the reconsideration request (“Reconsideration Order”). Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the Court has conducted a de novo review of those portions of the Report to which objections have been stated.

Petitioner states four objections to the report. First, he reiterates his argument that the Supreme Court’s decision in *Riley v. California*, 134 S. Ct. 2473 (2014), justified filing a “mixed” petition and warrants imposing a *Rhines* stay. The Report (at pp. 7-8) adequately explains why Petitioner’s *Riley* argument lacks merit.

1 Moreover, since the Report issued, the Ninth Circuit has confirmed that *Riley* is not
2 retroactive. *See Ly v. Beard*, No. 15-70939, 2016 WL 3318881, at *1 (9th Cir. June
3 15, 2016). Petitioner next asserts perfunctorily that his “confusion” about his statute
4 of limitations deadline satisfies the *Rhines* good cause requirement. For the reasons
5 set forth in the Reconsideration Order, this second objection is unpersuasive. Third,
6 Petitioner contends that the Magistrate Judge purportedly found a *Rhines* stay
7 unwarranted on the ground that the California Supreme Court’s dockets did not
8 show a habeas filing by Petitioner. Petitioner, however, mischaracterizes the
9 Report. (*See* Report at pp. 7-9.) Finally, as his fourth objection, Petitioner argues
10 that his appellate counsel’s failure to raise a *Riley* claim on appeal would constitute
11 “cause” to excuse any procedural default of the claim in this Court. Whether or not
12 this assertion is correct legally, it has no bearing on the *Rhines* stay issue, for the
13 reasons explained in the Report and the Reconsideration Order.

14 Nothing in the Objections affects or alters the analysis and conclusions set forth
15 in the Report. Having completed its de novo review, the Court accepts the findings
16 and recommendations set forth in the Report.

17 Accordingly, **IT IS ORDERED** that:

18 (1) Petitioner’s request for a *Rhines* stay is DENIED; and
19 (2) Within 21 days of this Order, Petitioner is directed to elect one of his three
20 Options set forth in the Report at pp. 9-10. Petitioner is cautioned that the
21 failure to elect one of these three Options in a timely manner will be deemed
22 to constitute an election of Option One, and as a result, this action will be
23 dismissed without prejudice.

24
25 **IT IS SO ORDERED.**

26 **7/12/16**

27 DATE: _____



DALE S. FISCHER
UNITED STATES DISTRICT JUDGE